



S.A.(MD)No.336 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

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1.Velusamy Servaikarar

2.Ramanathan

... Appellants

/Vs./

1.Poo Murugan

2.Vilvalingam

3.Lakshmi

4.Shanmugalakshmi

5.Sub Registrar,

Sayalkudi,

Ramanathapuram District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.60 of 2014, on the file of the Sub Court, Paramakudi, dated 17.11.2016 confirming the judgment and decree passed in O.S.No.58 of 2008 on the file of the District Munsif Court, Muthukulathur, dated 01.08.2014.



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For Appellants : Mr.H.Thayumanaswamy
For Respondents : Mr.A.Arumugam (R1)
No appearance (R2 to R4)
Mrs.S.Jeya Priya
Government Advocate

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the courts below. The defendants 1 and 2 in the suit in O.S.No.58 of 2008 on the file of the District Munsif Court, Mudukulathur are the appellants herein. The respondents are the plaintiffs and the third defendant in the suit. The suit was filed for declaration that the mortgage deed executed between the first and the second defendants is invalid and hence, it has to be cancelled. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. It is the case of the plaintiffs that the mortgage deed (Ex.A14) executed between the first and the second defendants is a fabricated



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document and hence, it has to be cancelled. According to the plaintiffs Ex.A14, mortgage deed is a self serving document and it does not create any title in favour of the first defendant, who had executed the mortgage deed in favour of the second defendant. According to the plaintiffs, the first defendant does not have any title over the suit schedule properties. The plaintiffs categorically pleaded that the mortgage deed (Ex.A14) is a fabricated document. The plaintiffs pleaded that they are the absolute owners of the suit schedule properties and the patta also stands in their names.

3. However, as seen from the written statement filed by the defendants, they claim that the mortgage deed (Ex.A14) is a valid mortgage. Based on the documents of the years 1905 and 1909, the defendants traced their title over the suit schedule properties. They also claimed that the patta is also standing in the joint names of the plaintiffs predecessors as well as the defendants predecessors in title.

4. Based on the pleadings of the respective parties, the trial Court framed issues. Before the trial Court, the plaintiffs filed 14 documents,



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which were marked as Exs.A1 to A14 and two witnesses were also examined on their side, namely, the second plaintiff, Poomurugan as P.W. 1 and another person by name Pandiyan as P.W.2. On the side of the defendants, 20 documents were filed, which were marked as Exs.B1 to B20 and three witnesses were examined, namely, the second defendant, V.Ramanathan as D.W.1 and two other persons by name, S.Kadhar Mydeen and Narayanan as D.W.2 and D.W.3 respectively.

5. The trial Court, namely, the District Munsif Court, Mudukulathur, by its judgment and decree dated 01.08.2014 passed in O.S.No.58 of 2008 decreed the suit in favour of the plaintiffs by declaring that the mortgage deed dated 03.01.2006 (Ex.A14) executed by the first defendant in favour of the second defendant is a invalid document and consequently, granted the relief of declaration as sought for by the plaintiffs in the suit by cancelling the said document. The trial Court, while dismissing the suit, has categorically given a finding based on the documents produced by the defendants, which have been marked as Exs.B1 to B20 that the said document did not refer to survey numbers, extents, Pimash numbers and patta numbers pertaining to the suit



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schedule properties. The finding of the trial Court found in paragraph

No.11 of the judgment reads as follows:

“11.பிரதிவாதிகள் தரப்பில் தாவா சொத்துக்களில் 1ம் இலக்க சொத்தை பொறுத்து எவ்வித ஆவணமும் தாக்கல் செய்யப்படவில்லை. மேலும் பிரதிவாதிகள் தரப்பில் செய்யப்பட்டுள்ள பி.வா.சா.ஆ.2,4,9,11,12,13,14 ஆகிய ஆவணங்கள் வழக்கு சொத்திற்கு எவ்விதத்தில் தொடர்பு உள்ள ஆவணங்கள் என்று பிரதிவாதி தரப்பில் நிரூபிக்கப்படவில்லை. மேற்படி ஆவணங்களில் தாவா சொத்துக்கள் சர்வே எண்கள் காணப்படவில்லை. மேலும் பி.வா.சா.ஆ.5, பி.வா.சா.ஆ.2, பி.வா.சா.ஆ.7, ஆகியவை வழக்கு சொத்துக்கள் பிரதிவாதிகளுக்கு பாத்தியம் என்பதை நிரூபிக்க தகுந்த ஆவணங்கள் இல்லை. மேலும் பி.வா.சா.ஆ.3 ஆனது வழக்கின் 2ம் இலக்க சொத்து 6 நபர்களுக்கு பாத்தியப்பட்டது என்று கண்டுள்ளது. மேலும் பிரதிவாதிகள் தரப்பில் பி.வா.சா.ஆ.8 ராமுத்தேவர் பெயரில் 23.12.1905 ம் தேதி முத்துச்சாமி சேர்வையால் 1ம் இலக்க சொத்தின் ஒரு குறுக்கம் கிரையம் கொடுக்கப்பட்டுள்ளதாக தாக்கல் செய்யப்பட்டுள்ளது. மேற்படி பி.வா.சா.ஆ.8 ஐ பார்வையிடும் போது அதில் தபசில் சொத்தின் சர்வே நம்பரோ மொத்த விஸ்தீரணமோ பை மால் நம்பர் பட்டா நம்பர் எதுவும் காணப்படவில்லை. மேலும் தபசில் சொத்தின் நான்கு மால் அளவுகளுக்கும் வழக்கு தாவா 1ம் இலக்க சொத்தின் அளவுகளுக்கும் ஒத்துப்போகவில்லை. பி.வா.சா.ஆ.8 வழக்கு 1ம் இலக்க சொத்திற்கு உண்டான ஆவணம் என்பது ஏற்றுக்கொள்ளப்படயாக இல்லை. மேலும் பிரதிவாதிகள் தரப்பில் வில்லியன் சேர்வை 25 1/2 செண்ட் 2ம் இலக்க சொத்தில் பாத்தியப்பட்டது என்று ஒப்புக்கொள்ளப்பட்டுள்ளது. வாதிகள் வில்லியன் சேர்வை மூலமாக தான் 2ம் இலக்க சொத்து தங்களுக்கு 27 1/2 செண்ட் பாத்தியம் என்றும் கூறியுள்ளனர்.”



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6. As seen from the above findings, it is clear that the defendants did not have any title over the suit schedule properties. On the other hand, the plaintiffs had produced pattas, Exs.A1 and A2 dated 24.10.2008 and 05.08.2008 respectively to prove that they are in possession of the suit schedule properties. The plaintiffs have not sought for declaration of their title over the suit schedule properties. The plaintiffs have sought for cancellation of the mortgage, which according to the plaintiffs, is a fabricated document created by the defendants to create title over the suit schedule properties. If the plaintiffs had sought for declaration of their title over the suit schedule properties, necessarily he has to produce all parent documents, by which they trace their title over the same.

7. However, the instant case is one where the plaintiffs sought only to declare the mortgage deed as null and void on the ground that the said document is a fabricated document. Therefore, the necessity for producing parent documents, by which the plaintiffs derived title over the suit schedule properties will not arise. It would suffice if the plaintiffs produce the proof for being in possession of the suit schedule properties.



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In the instant case, the plaintiffs have produced pattas, Exs.A1 and A2 standing in their names to prove that they are in possession of the suit schedule properties.

8. Having categorically pleaded that the defendants did not have any right to mortgage the suit schedule properties, as they did not have any title over the same, it is for the defendants to produce documentary evidence to prove that they have title over the suit schedule properties to enable the first defendant to execute a mortgage deed in favour of the second defendant.

9. As seen from the oral and documentary evidence available on record, the defendants have miserably failed to produce any iota of evidence to prove that the first defendant is having title over the suit schedule properties to enable the first defendant to execute a mortgage deed (Ex.A14) in favour of the second defendant. The documents produced by the defendants, which have been marked as exhibits do not reflect the survey number, pimash number and patta numbers, which is disclosed in the suit schedule properties.



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10. Only after giving due consideration to the same, the trial Court, in its judgment and decree dated 01.08.2014 in O.S.No.58 of 2008 and the lower appellate Court, in its judgment and decree dated 17.11.2016 in A.S.No.60 of 2014 have concurrently held that the first defendant does not have any title over the suit schedule properties and therefore, the mortgage deed executed by the first defendant in favour of the second defendant (Ex.A14) is null and void.

11. The mortgage deed (Ex.A14) is of the year 2006. Till date, it is also not known about the status of the mortgage deed (Ex.A14), as to whether the mortgagee has paid the dues to the mortgager or whether the mortgage has been duly discharged. 17 years have been lapsed. Having pleaded that the mortgage deed (Ex.A14) is a valid mortgage, the defendants ought to have produced necessary evidence before the trial Court in respect of their contention that the mortgage deed (Ex.A14) is not a fabricated document, but is a valid document executed for valuable consideration. They have miserably failed to produce any iota of evidence for the same before the trial Court. Both the Courts below have



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rightly considered all the contentions raised by the appellants / defendants and they have rightly rejected the same by holding that the mortgage deed (Ex.A14) is invalid document and it has to be cancelled. This Court, on 12.02.2021, admitted this second appeal by formulating the following substantial question of law:

“Whether the Courts below were right in granting a decree for cancellation of the mortgage deed, dated 03.01.2006 in the absence of a prayer for declaration of title of the plaintiffs?”

12. For the foregoing reasons, this Court is of the considered view that the substantial question of law formulated by this Court at the time of admission of this second appeal on 12.02.2021 has to be answered against the appellants / defendants by holding that the mortgage deed dated 03.01.2006 (Ex.A1) is an invalid mortgage deed and the declaration sought for by the plaintiffs in the suit was rightly granted in favour of the plaintiffs by the Courts below.

13. The learned counsel appearing for the appellants placed before this Court a judgment of the Hon'ble Supreme Court of India in the case



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of Union of India and Others vs. Vasavi Cooperative Housing Society

Limited and Others (2014 (2) SCC 269), which held that in a suit for declaration of title and possession, the burden of proof is on the plaintiff to establish his case irrespective of whether the defendant's case was proved or not. The decision has no applicability to the present case.

14. In the case on hand, the plaintiffs have not filed the suit for declaration to declare that they are the absolute owners of the suit schedule property, but they have filed the suit only to cancel the mortgage deed, which according to them, is a fabricated document and an invalid document. The plaintiffs have also filed pattas, Exs.A1 and A2 to prove that they are in possession of the suit schedule properties. Therefore, necessarily they have an interest in the suit schedule properties.

15. When the plaintiffs have not sought to declare their title over the suit schedule properties, but they have sought a limited relief of cancellation of a mortgage deed and that too when they are having interest over the suit schedule properties, the judgment referred to supra



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relied upon by the learned counsel appearing for the appellants will not apply to the facts of the instant case as in the said decision, it was a case, where the plaintiffs had sought for declaration of his title over the suit schedule properties when necessarily the initial burden of proof is on the plaintiffs therein.

16. For the foregoing reasons, there is no merit in this second appeal and accordingly, this second appeal is dismissed.

17. It is to be noted that the mortgage deed comprises of several properties, which includes the suit schedule properties also. Insofar as the judgments rendered by the Courts below are concerned, it is restricted only to the suit schedule properties alone and not for other properties. The same is made clear by this Court in this judgment also. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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ABDUL QUDDHOSE, J.

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TO:

- 1.The Sub Court, Paramakudi.
- 2.The District Munsif Court, Muthukulathur.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.336 of 2018

Dated:
20.06.2023